

Jamie M. Kohen/PH/MLBLaw  
10/30/2005 07:46 PM

To "Suzanne Garrow" <sgarrow@comcast.net>  
cc emazurek@morganlewis.com, "Joel Feldman"  
<jfeldman@crocker.com>, trice@toddweld.com,  
cohara@toddweld.com  
bcc  
Subject CEC/Milillo - Document Request for Fee Agreement

Hi Suzanne,

I write with regard to Defendants' request for the Fee Agreement between you and Plaintiffs.

First, even apart from Defendants' Supplemental Document Request, Corporate Defendants' initial Document Requests, served April 13, 2005, requested the Fee Agreements. As Request No. 11 stated:

To the extent you are seeking attorneys' fees and costs, all documents concerning any agreement between you and your attorney for the payment of attorneys' fees and costs in connection with this litigation.

Accordingly, Defendants' request for such documents was timely for this reason alone.

Second, you expressed that you do not believe such agreements are properly subject to discovery. Caselaw uniformly establishes that where a plaintiff seeks attorneys' fees, fee agreements between plaintiff and counsel are both relevant and not privileged. See, e.g., Montgomery County v. MicroVote Corp., 175 F.3d 296, 304 (3rd Cir. 1999); Maddow v. Proctor & Gamble Co., 107 F.3d 846, 853 (11th Cir. 1997); United States v. Anderson, 906 F.2d 1485, 1492 (10th Cir. 1990); In re Grand Jury Proceedings Subpoena to Testify to Wine, 841 F.2d 230, 233 n. 3 (8th Cir. 1988); Consol. Health Plans v. Principal Performance Group, Civ. A. No. 02-1230, 2003 WL 21406181, \*3 (E.D. La. 2003); In re Sheffield, 280 B.R. 719, 721 (S.D. Ala. 2001); Duttie v. Bandler & Kass, 127 F.R.D. 46, 52 (S.D.N.Y. 1989).

Accordingly, please confirm either : a) that you will produce the signed fee agreements for all four Plaintiffs by November 3, 2005; b) that Plaintiffs will not produce the signed fee agreements because they do not intend to see attorneys' fees and costs; or c) that Plaintiffs continue to refuse to produce such documents. As I previously indicated, if Plaintiffs continue to refuse to produce such documents, we will seek Court intervention.

Thanks,

Jamie M. Kohen  
Labor and Employment Associate  
Morgan, Lewis & Bockius LLP  
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"Suzanne Garrow" <sgarrow@comcast.net>



"Suzanne Garrow"  
<sgarrow@comcast.net>

10/24/2005 10:17 AM

To jkohen@morganlewis.com

cc emazurek@morganlewis.com, trice@toddweld.com, "Joel Feldman" <jfeldman@crocker.com>

Subject RE: CEC/Milillo - Corporate Defs' Supplemental Document Request

Jamie,

In the Joint Motion the parties acknowledged that paper discovery was completed, (see paragraph 2), and that only depositions remained:

"1. All non-expert depositions will be completed by December 31, 2005." (Joint Motion Schedule A). The Court endorsed the Joint Motion without further modification. (See docket entry no. 29).

You failed to seek leave of Court prior to serving the untimely requests at issue and the documents and information requested in Corporate Defendants' Supplemental Document Request, are objectionable on that basis.

In addition, I indicated that we believe that you are not entitled to the documents and information requested. You have failed to provide any First Circuit authority that indicates otherwise. Seeking Court intervention would thus be premature.

Suzanne

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-----Original Message-----

From: jkohen@morganlewis.com [mailto:jkohen@morganlewis.com]

Sent: Friday, October 21, 2005 5:50 PM

To: Suzanne Garrow

Cc: emazurek@morganlewis.com; trice@toddweld.com

Subject: CEC/Milillo - Corporate Defs' Supplemental Document Request

Dear Suzanne,

I am writing with regard to Corporate Defendants' Supplemental Document Request, which was served on Plaintiffs' counsel on September 15, 2005. You stated that Plaintiffs do not intend to respond to this request because all document requests were to be served before the time we served. We disagree.

The Court's initial Scheduling Order, dated March 10, 2005 originally set April 15, 2005 as the date by which the parties' discovery should be served. However, the parties modified, and the Court approved, the discovery deadline in this case, until the end of the year. (See docket entry no. 29). Moreover, in light of the mutual letter campaign regarding the parties' productions that was occurring at the time that the stipulation was negotiated, it is clear that document discovery was still in play.

Please let me know by Tuesday, October 25 at noon if Plaintiffs will provide the requested documents; otherwise, Corporate Defendants will seek the Court's assistance.

Thanks,

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